

IN THE TENNESSEE PUBLIC SERVICE COMMISSION  
NASHVILLE, TENNESSEE

08 OCT 20 PM 4 06

EXECUTIVE SECRETARY

IN RE: IN RE: PETITION OF AT&T, )  
MCI, SPRINT AND WORLDCOM )  
d/b/a WILTEL NETWORK ) DOCKET NO. 98-00097  
SERVICES FOR THE )  
COMMENCEMENT OF A )  
RULEMAKING PROCEEDING TO )  
PROVIDE FOR THE TERMINATION )  
OF PRICE CAP REGULATION FOR )  
INTEREXCHANGE CARRIERS AND )  
TO AMEND RULE 1220-4-2-.55(2). )

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**MOTION TO FILE COMMENTS IN REPLY TO AFFIDAVIT OF MR. JOSEPH  
GILLAN ON BEHALF OF AT&T TELECOMMUNICATIONS OF THE SOUTH  
CENTRAL STATES**

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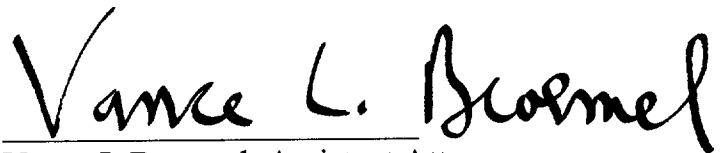
Comes the Consumer Advocate Division of the Office of the Attorney General and Reporter, on behalf of Tennessee consumers, and respectfully moves the Tennessee Regulatory Authority to accept the attached Affidavit of Dr. Stephen N. Brown as part of the record in docket 98-00097. The affidavit addresses issues first raised in this docket in the affidavit of Mr. Joseph Gillan filed on behalf of AT&T Telecommunications of

**FILE**

the South Central States on October 18, 1999.

The Affidavit of Dr. Brown addresses the issue of whether the circuit switched network is or will become obsolete. Mr. Gillan, on behalf of AT&T, states that the switched network is largely obsolete and, therefore, the fundamental cost bases of traditional pricing will become irrelevant. Dr. Brown disagrees and cites supporting evidence for his position. This evidence should be considered by the TRA in order to reach a sound result in this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Vance L. Broemel". The signature is written in a cursive style with a large, sweeping "V" at the beginning.

Vance L. Broemel, Assistant Attorney  
General  
Consumer Advocate Division  
Attorney General's Office  
425 5th Ave. North  
Nashville, TN 37243

CERTIFICATE OF SERVICE

I hereby certify that this document was served on parties of record by U.S. Mail or by facsimile this 20<sup>th</sup> day of October, 1999.

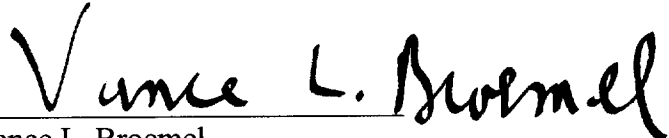
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Vance L. Broemel

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

)  
)  
IN RE: PETITION OF AT&T, MCI, SPRINT )  
AND WORLDCOM d/b/a WILTEL )  
NETWORK SERVICES FOR THE )  
COMMENCEMENT OF A RULEMAKING ) DOCKET NO. 98-00097  
PROCEEDING TO PROVIDE FOR THE )  
TERMINATION OF PRICE CAP )  
REGULATION FOR INTERCHANGE )  
CARRIERS AND TO AMEND RULE 1220- )  
4-2.55(2). )

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AFFIDAVIT

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Comes the affiant Dr. Stephen N. Brown after being duly sworn who deposes and says:

1 I am Stephen N. Brown.  
2

3 I am an economist in the Consumer Advocate Division, Office of the  
4 Attorney General.  
5

6 I review utility filings and information relating to rates and rate changes  
7 and follow the economic conditions that affect the companies. I also assess  
8 and evaluate facts for the Consumer Advocate Division and other entities  
9 within the Office of the Attorney General.  
10

11 From 1986 to 1995 I was employed by the Iowa Utilities Board as Chief of  
12 the Bureau of Energy Efficiency, Auditing and Research, and Utility  
13 Specialist and State Liaison Officer to the U.S. Nuclear Regulatory  
14 Commission. From 1984 to 1986 I worked for Houston Lighting & Power  
15 as Supervisor of Rate Design. From 1982 to 1984 I worked for Arizona  
16 Electric Power Cooperative as a Rate Analyst. From 1979 to 1982 I  
17 worked for Tri-State Generation and Transmission Association as Power  
18 Requirements Supervisor and Rate Specialist. From 1979 through 1995

1 my work spanned many issues including cost of service studies, rate  
2 design issues, telecommunications issues and matters related to the  
3 disposal of nuclear waste.  
4

5 I have an M.S. in Regulatory Economics from the University of Wyoming,  
6 an M.S. and Ph.D. in International Relations with a specialty in  
7 International Economics from the University of Denver, and a B. A. from  
8 Colorado State University.  
9

10  
11 I am a past member of the NARUC Staff Committee on Management  
12 Analysis, a past trustee of and a member of the Board for the Automatic  
13 Meter Reading Association, and a current member of the National  
14 Association of Business Economists.  
15

16 I am providing this affidavit in response to a technical issue not raised  
17 previously but raised solely in the affidavit provided by Joseph Gillan and  
18 filed October 18, 1999 by AT&T in Notice of Rulemaking: Rule 1220-4-  
19 2.55(2) ("IXC Rules.")  
20

21 I respectfully submit that Mr. Gillan's opinion, expressed at par. 24 that  
22 the "circuit switched network...is largely obsolete," and his opinion  
23 expressed at par. 26, that packet-switching technology makes "the  
24 fundamental cost basis of traditional pricing...irrelevant" are both wrong.  
25 Both opinions contradict the expert opinion in the public record of the  
26 FCC's July 9, 1998 En Banc hearing, when Mr. Steven G. Chrust, vice-  
27 chairman of Winstar, told the FCC: "As their packet switch networks are  
28 developed and deployed, the incumbents will not abandon their circuit  
29 switch networks. They will merge their existing networks with the data  
30 networks." Pages 1, 2 and 12-15 of the hearing's transcript are attached to  
31 my affidavit. Page 15 contains the quote I referenced.  
32

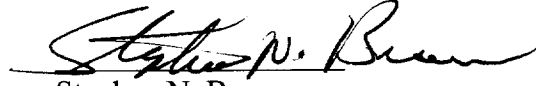
33 I agree with Mr. Ghrust. Therefore, the TRA should be more than  
34 circumspect about the time frame applied to Mr. Gillan's claim that  
35 "fundamental cost basis of traditional pricing...will become irrelevant."  
36 He has specified no particular month or year when irrelevancy is an  
37 accomplished fact. Nor does he say traditional pricing is irrelevant right  
38 now, today. This omission should be considered as evidence that Mr.  
39 Gillan is not speaking of the imminent future. Further evidence suggests  
40 that the speculative future is appropriate time frame for Mr. Gillan's  
41 concerns.  
42

1 For example, at par. 26 Mr. Gillan says the “scale efficiency of the  
2 technology overlapped with terabit per second (and ever increasing) fiber  
3 systems will drive costs by any measure down to levels where usage-based  
4 pricing may not even be administratively sustainable” without saying when  
5 the unsustainability begins.  
6

7 However, in the En Banc hearing Mr. James Crowe of Level 3 told the  
8 FCC commissioners: “and finally, I think you[’ve] got to remember that  
9 today’s wide band -- today’s broadband is tomorrow’s narrow band. This  
10 process is just starting [emphasis added by affiant]. It’s going to be  
11 continuous. We’re headed-- the bandwidth of the optic nerve, by the way  
12 isn’t characterized yet. But it’s in the gigabits, perhaps hundreds of  
13 gigabits a second. So, we’ve got a long, long, long period of time before  
14 we deliver the kind of bandwidth people demand [emphasis added by  
15 affiant].” Mr. Crowe makes this statement at page 80 of the En Banc’s  
16 hearing’s transcript. A copy of that page is attached to my affidavit.  
17

18 At par 32. of his affidavit Mr. Gillan characterizes the proposed rule as  
19 “doomed to failure,” but I have shown evidence that the technological  
20 basis of Mr. Gillan’s claims has little potential for fruition in the  
21 immediate future. If the time comes when minutes of use and access  
22 charges disappear as a revenue source for telecommunications service  
23 providers, the TRA has the option of terminating or amending the rule as  
needed.

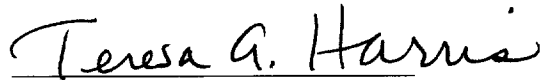
Further the affiant sayeth not.

  
Stephen N. Brown

State of Tennessee  
County of Davidson

Before me, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Stephen N. Brown, who, being by me first duly sworn and deposed made the statement above.

Sworn to and subscribed before me this  
20<sup>th</sup> day of October, 1999.

  
Notary Public

My commission expires Jan. 25, 2003

## FEDERAL COMMUNICATIONS COMMISSION

In the matter of: )  
— )  
EN BANC HEARING )  
JULY 9, 1998 )

Federal Communications  
Commission  
Room 856  
1919 M Street, N.W.  
Washington, D.C.

Thursday,  
July 9, 1998

The hearing commenced at 11:10 a.m.

APPEARANCES:

WILLIAM E. KENNARD, CHAIRMAN  
COMMISSIONER MICHAEL K. POWELL  
COMMISSIONER SUSAN NESS  
COMMISSIONER HAROLD FURCHTGOTT-ROTH  
COMMISSIONER GLORIA TRISTANI  
STEVE HOOPER  
STEVEN G. CHRUST  
MAURICE FRANCE  
ALI SHADMAN  
CHARLES J. MCMINN  
MILO MEDIN  
W. RICHARD MORRIS  
JOSEPH R. ZELL  
JAMES Q. CROWE



P R O C E E D I N G S

1           CHAIRMAN KENNARD: Good morning and welcome.  
2   Welcome to the Commission's En Banc Hearing on bandwidth.  
3   I'm delighted that we have so much interest in this subject.  
4   I truly believe that encouraging more bandwidth,  
5   particularly, to residential consumers in the country, is  
6   the next great frontier in communications policy.

7           As I was saying, bandwidth is the great -- the  
8   next great frontier in communications policy. And I want  
9   the hallmark of this Commission's work to be that we  
10   encourage the competitive provision of high speed networks  
11   and services using any appropriate technology for all  
12   Americans wherever they live, at home, at work, in schools,  
13   libraries, hospitals, whether they live in cities or in  
14   rural areas, on reservations. Wherever there's demand,  
15   there should be bandwidth.

16           There are a wide variety of firms using various  
17   technologies all wanting to provide high speed networks and  
18   services. And I believe it's important that all of these  
19   firms, whether new entrants or established providers, be  
20   able to compete without being constrained by burdensome  
21   regulation or being held back unfairly through the exercise  
22   of market power by those who control essential bottleneck  
23   facilities.

24           One of the great challenges that we have at the

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(202) 628-4888

1 for effective competition. And to eliminate some of those  
2 regulations would make it more difficult for companies like  
3 NextLink to continue.

4 I see the red light is on, and that means I must  
5 cease, I guess.

6 CHAIRMAN KENNARD: Thank you. Mr. Chrust?

7 MR. CHRUST: Good morning, Mr. Chairman and  
8 Commissioners. And thank you for the opportunity to appear  
9 before you.

10 My name is Steven Chrust. I'm vice chairman of  
11 WinStar, a wireless competitive local exchange carrier. By  
12 way of introduction, WinStar Communications is a nationwide  
13 CLEC with broadband licenses in 38 gigaHertz spectrum  
14 covering the majority of the commercial population and much  
15 of the residential population serving small and medium-sized  
16 business customers, as well as long distance carriers and  
17 other wholesale customers.

18 Over the next several years, WinStar also will be  
19 using new multi-point technology which currently is being  
20 tested for commercial use over the next 12 months, first to  
21 business and then certain residential markets.

22 Our company generally offers the same services as  
23 other facilities-based CLECs, but our last mile connection  
24 is high capacity broadband wireless. This broadband  
25 wireless connection enables WinStar to significantly expand

1 the addressable market and offers lower network buildout and  
2 operating costs, because we do not need to obtain  
3 construction permits, rights of way, dig up streets and  
4 string fibre to poles or through conduit which itself, is a  
5 very labor-intensive process.

6 We simply place small antennas on rooftops of  
7 buildings where we serve customers. We offer a full array  
8 of broadband services to the greater bandwidth we will be  
9 able to deliver on a more cost effective basis than wired  
10 mediums.

11 Because we do not need access to the incumbent  
12 local exchange carrier local loop or the ILEC switch to  
13 originate traffic except as a transition while we construct  
14 our network, our interconnection needs are concentrated  
15 principally at the interoffice level for the basic task of  
16 interconnection of our network for the ILEC network, for  
17 termination to customers not on our facilities.

18 It is important, though -- I can't emphasize this  
19 too greatly, to fully appreciate the need for a transition  
20 period which is sufficiently long to allow the new market  
21 entrants to compete effectively against the entrenched  
22 incumbents who hold great market power and substantial  
23 advantages which form significant barriers to entry.

24 With respect to deployment of advanced  
25 telecommunications capabilities, let me begin by saying that

1     there is no doubt that the Telecom Act has facilitated the  
2     deployment of broadband services. It tore down and reduced  
3     many of the legal barriers that stood in the way of the  
4     success of the company such as WinStar. It's vitality,  
5     effectiveness and relevance two and a half years after its  
6     enactment is undiminished.

7             As a direct result of the Act's passage,  
8     customers' needs are rapidly reshaping today's  
9     telecommunications marketplace. The first evidence of this  
10    phenomenon is the creation by the CLEC's of the nation's  
11    first digital local networks in direct response to increased  
12    customer demand for broadband capabilities. This represents  
13    a major point of differentiation from the ILEC's who still  
14    rely principally on copper wire technology for the local  
15    loop.

16            Importantly, however, the competitive pressures  
17    the CLEC's have brought to bear is directly responsible for  
18    moves by the incumbents to embrace new technologies and to  
19    upgrade their networks. This is not an accident or an  
20    anomaly that has occurred despite the Act. Rather, it is a  
21    direct result of the success of the Act. Competition, not  
22    regulatory relief is the best incentive to deployment of  
23    advanced telecommunications capabilities.

24            CLEC's today are among the nation's leading  
25    providers of data services. For example, WinStar uses

1     spectrums to provide high capacity broadband services to our  
2     customers, what we call wireless fibre service. In addition  
3     to supporting such high bandwidth services, our 38  
4     gigaHertz-based networks and the networks of other CLECs  
5     provided an additional advantage, the ability to offer and  
6     manage unified voice and data services over a single network  
7     infrastructure.

8             With respect to the role of Section 706 in  
9     fostering the deployment of advanced telecommunications  
10    capabilities, let me stress the Telecom Act has written its  
11    technology neutral. When it comes to interconnection,  
12    unbundling publication and resale of the incumbent's  
13    networks, the Act does not distinguish between data and  
14    voice. And that was not the point of Section 706. The Act  
15    stands for the proposition that networks are networks  
16    regardless of the services provided over them.

17            As their packet switch networks are developed and  
18    deployed, the incumbents will not abandon their circuit  
19    switch networks. They will merge their existing networks  
20    with the data networks.

21            In fact, if we allow 706, doing so will subvert  
22    the benefits technology is now beginning to offer as all  
23    services will be deliverable on the same network, reducing  
24    costs and increasing productivity. For CLEC's to reach  
25    their full potential in deploying technology for advance

1 the copper loop. Not ADSL, not advanced services, not  
2 trunking, not switching, not long haul. The market will  
3 provide capital to compete with all of those and already is.

4 But that loop is not in a condition today to  
5 accept advanced services. One of the players has to do  
6 something to it to make it available to competitors, and  
7 they have no interest, no economic interest in doing so.

8 MR. MCMINN: In fact, an economic disactive  
9 disinterest from doing it.

10 MR. CROWE: Well, sure. They're acting in their  
11 economic interests. What else would they do?

12 MR. MCMINN: I asked --

13 MR. CROWE: And finally -- I have one last point.  
14 And finally, I think you got to remember that today's wide  
15 band -- today's broadband is tomorrow's narrow band. This  
16 process is just starting. It's going to be continuous.  
17 We're headed -- the bandwidth of the optic nerve, by the  
18 way, isn't characterized yet. But it's in the gigabits,  
19 perhaps hundreds of gigabits a second. So, we've got a  
20 long, long, long period of time before we deliver the kind  
21 of bandwidth that people demand.

22 And individual assumptions about technologies  
23 winners and losers, whose got to provide the service, will  
24 prove inaccurate. You've got to let the market operate.

25 CHAIRMAN KENNARD: Thank you. Mr. McMinn?